

# INFORMATION HOTLINE

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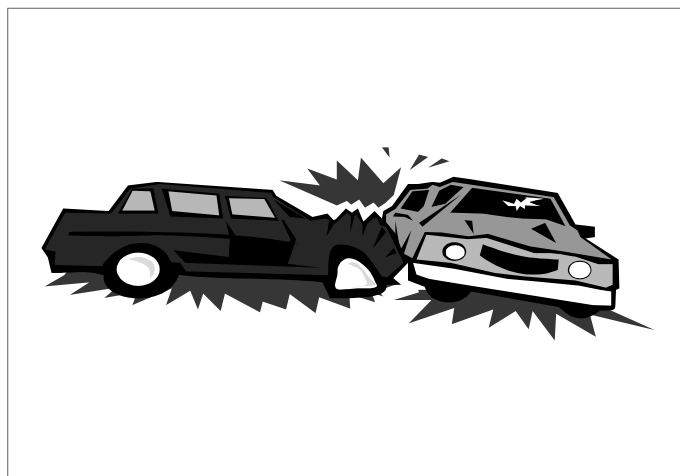
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## WHEN TWO BUMPERS MEET

There seems to be a percentage (1% is too many) of DC's who, regardless of how minimal the impact in an auto accident always seems to find excessive soft tissue trauma. We all accept the fact that a 5 mph impact can produce a variety of acute trauma. However, we must have clinical signs and symptoms to justify the degree of spinal and associated tissue damage. This level of damage will determine your case management both in frequency and duration of care.



Minimal impact — excessive soft tissue trauma

Recently a few doctors have notified the South Dakota Board of Chiropractic Examiners of form letters they have received from insurance "Claim Representatives" (same letters, different representatives) regarding patient care following an auto accident, with limited vehicle damage, involving their insured. These letters serve not only as an attempt to intimidate the doctor but borderline on a threat. The following are a few phrases used in these notices: 1)... minor damage to your patient's vehicle serves as an objective indicator of how

little the impact was sustained by the bumper and absorbers. 2)... lack of visible damage. 3) ... all treatment will be thoroughly scrutinized. 4)... subjected to a medical audit. 5)... based on the impact, I suspect treatment will be very limited. 6)... confident in our ability to obtain a favorable result should this matter proceed to litigation.

It becomes quite apparent the claims representative has not only made a, sight unseen, preliminary trauma assessment but also has

(Continued on page 2)

## DECEPTIVE ADVERTISING

The Board of Examiners has been spending a great deal of time and attention lately dealing with advertising abuses. On one end of the advertising spectrum are very conservative guidelines defined by the rules and regulations of chapter 20:41:09:07 and 07.01, while the other end of the spectrum seems to be defined by hucksters exploiting all forms of "creative," (and deceptive) gimmicks designed

to get those new patients into your front door.

For those of you who are contemplating some form of advertising in order to build your practice and draw in new patients, remember this — the Board of Examiner's cardinal mission is to protect the consumers of chiropractic in the state.

(Continued on page 2)

## 2006-2007 CONTINUING EDUCATION REQUIREMENTS

2006 is the start of the new education cycle and the total of forty hours of continuing education needs to be completed by December 31, 2007. There are two new changes in the educational requirements.

The first change is that two hours of Ethics and Fraud training be completed this education cycle. This, once again, will be attainable online through [www.Dconline.cc](http://www.Dconline.cc) in the next couple months. There will also be a course available during the 2006 spring conference and possibly the 2007 spring conference. We have had an increase in Doctor and patient complaints, prompting this mandate. *The previous education cycle mandated hours were on sexual boundaries. Sexual boundaries hours do not need to be obtained this education cycle.*

The second change is that a doctor may take a total of twenty-four hours maximum of continuing education hours in technique per forty hour cycle. The rest of the hours must involve other training such as x-ray, orthopedics, neuro, diagnosis, rehab, nutrition, exercise, physiotherapy as examples. If there is any question regarding this, it would be best to call the Board of Examiner's office prior to taking a class to see if it meets the requirements. This mandate has also been prompted by many doctors taking only technique hours for their continuing education. The Evaluation of Clinical Competency is already starting to take place in other professions such as family doctors. We feel this is necessary and in our profession's and our patient's best interest.

Submitted by Dr. Mark Bledsoe

*TWO HOURS OF  
ETHICS/FRAUD  
HAVE BEEN  
MANDATED FOR  
2006-2007  
EDUCATION  
PERIOD*

## WHEN TWO BUMPERS MEET (CONTINUED)

*(Continued from page 1)*

determined a diagnosis, treatment protocol, and recovery time period.

To many doctors, a letter such as this will cause them (the letter's primary intent) to consider the financial concerns and warnings of the insurer rather than their responsible care of the patient.

You must do what you are qualified to do and what is right for the optimum outcome for your patient and disregard any outside influence that could place you and your patients recovery in jeopardy.

Submitted by Dr. Donn Fahrendorf

## DECEPTIVE ADVERTISING (CONTINUED)

*(Continued from page 1)*

If those consumers have difficulty understanding the substance of a finely crafted deceptive advertising promotion, chances are, the board won't either.

Please review those grounds of improper advertising listed in chapter 20:41:09:07 and 07.01. (see page 3) Make sure the marketing plan that you are contemplating clearly avoids those practices restricted in our rules and regulations. If you have any

doubt about your advertising being ethical, contact the board before you commit to your



**Review advertising guidelines prior to printing. Do not hesitate to contact the board office if you have questions.**

program. Also, please be advised that if your promotion/ad is determined to have breeched our rules and regulations, you may be obligated to print a correction at your cost.

Submitted by Dr. Robin Lecky

## REVIEW OF VARIOUS LAWS, RULES/REGULATIONS, POLICIES/OPINIONS, CODE OF ETHICS

### Statute:

**36-5-1. Scope of practice ~ Limitations.** Chiropractic is hereby defined to be the science of locating and removing the cause of any abnormal transmission of nerve energy including diagnostic and externally applied mechanical measures incident thereto. Chiropractors shall not be entitled to practice obstetrics or treat communicable diseases.

### Rules/Regulations:

**20:41:09:01. Patient care and charges.** A chiropractor shall attend the patient as often as necessary to insure continued favorable progress, but shall avoid unnecessary visits. The standards as set forth in § 20:41:14:07 shall be the standards for determining the chiropractic standard of care in the state of South Dakota. No charge may be made which overestimates the advice and services rendered. The ability of the patient or insurance carrier to pay cannot be used to justify a charge in excess of the value of the service, although poverty of the patient may require a lesser charge or none at all. A chiropractor may not charge a patient, or a person authorized on behalf of a patient, for the costs of reproduction of chiropractic patient records in excess of the reasonable cost to photocopy the records and for the postage to mail the photocopied records to the patient.

**20:41:09:06. Distributed material.** Distributed or advertised material may not make any promise of special techniques or methods or of cure or imply superiority. Such material may not contain statements that are false or misleading and shall not falsely castigate or criticize other health sciences or make claims that cannot be substantiated by clinical or laboratory or diagnostic procedures.

**20:41:09:07.01. Advertising.** Doctors of chiropractic may not take part in advertising which is false, fraudulent, deceptive, or misleading. Sanctions may be imposed for the use of improper advertising based upon any of the following grounds:

(1) Advertising in which untruthful, improper, misleading, or deceptive statements are made;

(2) Advertising or soliciting which guarantees any service or result;

(3) Advertising that represents to the public the chiropractor possesses special skill, training, knowledge, or qualifications unless the board has recognized the training or certification on which the representation is based;

(4) Advertising the waiver of a payment for any part of a deductible or co-payment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the chiropractor's services, is otherwise required to pay;

(5) Advertising no out-of-pocket expenses or practicing the same;

(6) Advertising free or discounted examination or service. Advertising which offers free or discounted service for public service programs must be pre-approved by the board; or

(7) Advertising a discount of a fee for any patient that pays in cash at the time of service.

### Policies/Opinions

It is the Board's opinion that "service agreements" are not permitted in South Dakota pursuant to ARSD 20:41:09:01. "Service Agreements" would create a public perception that the number of visits being paid for in advance creates a perceived "need" for the number of visits set forth. The patient therefore believes he is getting a better "deal" by paying in advance for the perceived number of "necessary" visits. Because of the great potential for not only misleading the public, but also abuse by a chiropractic physician towards inducing unnecessary patient visits, it is the opinion of the board that the use of service agreements is prohibited.

### ACA Code of Ethics

The code of ethics is based upon the fundamental principle that the ultimate end and object of the chiropractor's professional services and effort should be

**"The greatest good for the patient."**

A(7) Doctors of chiropractic owe loyalty, compassion and respect to their patients. Their clinical judgment and practice should be objective and exercised solely for the patient's benefit.

*Please visit our website  
at*

*[www.state.sd.us/dob/  
chiropractic](http://www.state.sd.us/dob/chiropractic)*

*for a complete set of our  
statutes, rules and  
regulations.*

## OFFICE CLOSURE POLICY

Following is the board's response to inquiries regarding our policy on office closures:

### Office Closure Policy – Retirement/Inactive

It is advised that a licensee who terminates the active practice but is not selling the practice, run an ad in the local newspaper on two separate occasions notifying former patients of his/her intention to retire and advise them of a time and place to pick up their records. If there is another doctor in the area that is willing to retain the records for a specific period of time, they can also advertise that after a specific date the records will be available at Dr. \_\_\_\_\_'s office. The licensee must notify the Board in writing of retirement/inactive status and of the location where the patient records will be stored within 30 days of terminating active practice.

### Office Closure Policy – Selling Practice

It is advised that a licensee who has sold his practice, run an ad in the local newspaper on two separate occasions notifying patients of the sale and if their records will be kept with the business or elsewhere. The patient should also be notified that if they do not want their records to go to another doctor, whether by transfer or sale, they would certainly be able to come to the office and get their records within a time certain. This may also be done with a mailing to patient database. The licensee must also notify the Board in writing of these actions within 30 days along with their

new address.

### Office Closure Policy – Associate Leaving

It is advised that the licensee who is leaving a multi-doctor practice run an ad in the local newspaper on two separate occasions or send a mailing to patient database notifying patients that they will be leaving the clinic as of specific date. The notice/letter should also indicate that the patient files will remain with the clinic if that is the case. If not, the patients need to be notified where their files will be. The patient should also be notified that if they do not want their records to go to another doctor, they would certainly be able to come to the office and get their records within a time certain. The licensee must also notify the Board in writing of these actions within 30 days along with their new address.

If you have any questions or concerns, please contact the Board office. Thank you!

*ADDITIONAL  
BOARD POLICIES  
CAN BE FOUND  
AT  
WWW.STATE.SD.  
US/DOH/  
CHIROPRACTIC*

## DO NOT PROCRASTINATE

*As indicated previously, we are starting a new education period with 40 hours of continuing education due between January 1, 2006 and December 31, 2007. Also, this education period, the board is mandating two hours in ethics and fraud. Please do not wait until the last minute to obtain your hours. Scenarios that may and/or have been encountered due to procrastination: 1) hours were taken online, company hours were taken from closed their doors and DC did not get verification of hours for submission—thus*

*needed to take additional hours to receive credit; 2) last month of education cycle approaches and the seminar you were planning to attend cancelled due to weather or illness; 3) entity course was taken through closed for the holidays so verification of hours could not be obtained. **Save yourself and the board office the headache and frustration of waiting until the last minute to fulfill your hours requirement — start now — don't procrastinate!!!***

## ARE YOU COMMITTING INSURANCE FRAUD WITH EXPENSIVE HIGH TECH TESTING?

An article in DYNAMIC CHIROPRACTIC, dated January 1, 2006 by Richard Jaffe, Esq., asks the question, "ARE YOU COMMITTING INSURANCE FRAUD BY DOING EXPENSIVE HIGH TECH TESTING?"

According to provisions set up under HIPAA, that makes it a crime to commit fraud against any non federal third party payor, you very well could be. Before federal prosecutors were looking for fraudulent activities involving federal programs only, under HIPAA that is no longer the case. Under HIPAA any medically unnecessary treatment or testing is considered criminal. HIPAA defines fraud to include the rendition of medically unnecessary treatment or testing, which eliminates the intent to defraud any good faith requirements for defense against fraud charges.

High Tech testing is that which costs hundreds or thousands of dollars to administer to the patient, examples being nerve conduction type studies and radiographic studies that are over and above our regular procedures. There are two ways that seem to be in practice in various chiropractic practices today. The first being the type in which a DC buys a piece of testing equipment, probable on a lower monthly payment, with promises of course, that this is a legitimate way of treating patients and enhancing one's practice. The second type is where specialized interpretive skills are needed. This type utilizes a mobile unit or has a special referral site where the equipment is located. These testing companies usually handle all the billing of fees and the DC gets his fee through administering some technical component of the test or a rental fee for his space. These fees are being considered kick backs for referring the patient for the testing procedures without having accurately determined the medical necessity of the test being performed.

Most, if not all chiropractic practices occasionally have a need to refer for special tests / procedures that are high tech and expensive. However, when you send all or a substantial number of your patients for these special tests and are receiving some kind of fee for this, the federal government is taking the position

that you are committing fraud. The federal government may not even be the plaintive in a case against the testing company and it's associates. It will most likely be some third party payer. There are already a number of fraud and racketeering civil cases being brought by insurance companies. Because of the amounts of moneys being involved in these cases, the loss being what drives federal sentencing, these fraudulent companies and their affiliates could be facing 20 years in prison.

After one of these large civil suits is completed, the feds will be knocking on the doors of associated chiropractors with testimony already in hand of kick backs, illegal payoffs and over utilization of testing. Most DC's involved will plead before facing years in prison. The plea may save them 20 years in prison, but they will be pleading to a felony charge and be faced with revocation of their licenses, restitution of monies and 1-3 years in prison. Getting your license back after this has happened to you may be quite difficult in most if not all states.

We may think that we don't participate in fraudulent activities because we don't participate in high tech testing. Remember that the new federal perspective, as seen in the Inspector General's Report from the Department of HHS, is that lack of medical necessity is directly related to service volume. This leaves all chiropractors at risk. This view seems rather harsh to me personally and the only way I can see to protect oneself is to have documentation that is in order and shows need for services rendered and especially for Medicare, shows that these services are not maintenance, but supportive in nature when dealing with patients with chronic disorders. I believe this board and the associations have been telling us this for years now and examples of proper note keeping abound. Find a source and use it, if not, be prepared to pay the consequences.

*Most of the above material was taken from Mr. Richard Jaffe's article, please refer to it if you want more detail.*

Submitted by Dr. Mark Steiner

*"Find a source and use it, if not, be prepared to pay the consequences."*

South Dakota Board of Chiropractic

2603 Ella Lane  
Yankton, SD 57078

Examiners



We're on the web  
[www.state.sd.us/doh/  
chiropractic](http://www.state.sd.us/doh/chiropractic)

## MISSION STATEMENT / UPCOMING MEETINGS

The mission of the South Dakota Board of Chiropractic Examiners is threefold: to protect the continuing health, welfare, and safety of consumers of chiropractic services by ensuring that qualified chiropractors are licensed and their practice is regulated by enforcement of updated statutes, rules, regulations, and board policies, including continuing education and consumer complaint processing.

PLEASE NOTIFY THE BOARD  
OFFICE WITH ANY CHANGE OF  
ADDRESS, PHONE NUMBER OR  
E-MAIL!!!!

### BOARD OF EXAMINERS MEETING DATES FOR 2006

March 25, 2006—Chamberlain, SD -  
AmericInn

June 2-3, 2006 -Canistota, SD—  
Ortman Clinic

September 8-9, 2006—Chamberlain,  
SD Cedar Shore Resort

December 2-3, 2006—Canistota, SD  
- Ortman Clinic